

**REMARKS**

Claims 1-19, 21-25, 27-31 and 34-38 are pending in this application. By this Amendment, claims 1, 29, 30 and 36-38 are amended and claims 20, 26 and 32-33 are canceled. No new matter has been added. Claim 1 has been amended to incorporate the features of claims 20 and 26. Claims 29 and 30 have been amended to incorporate the features of claim 1. Support for the changes to claims 29 and 30 may be found, for example in paragraphs [0030] and [0031].

Claims 2, 3, 8, 9, 17, 29 and 30 are withdrawn as directed to the non-elected invention and species. In view of the amendment to claims 29 and 30 to include the features of claim 1, rejoinder of claims 29 and 30 is respectfully requested.

Claims 1, 4-7, 10-16, 18-28 and 31-36 stand rejected under 35 U.S.C. §103(a) over Buckley et al., U.S. Patent No. 4,219,283 in view of Drozd, Jr., U.S. Patent No. 4,489,843. This rejection is respectfully traversed.

Claim 1 recites, in pertinent part, a device comprising... a flask having a capacity not greater than 10 ml ... the flask containing a substance for application to nails ... an applicator comprising ...a closure cap ... wherein the closure cap comprises a ring releasably connected to the threaded portion and ... wherein the ring occupies substantially a same axial position before and after separation of the ring and the closure cap. The combination of Buckley and Drozd fails to teach or suggest a device having these features.

Both Buckley and Drozd fail to teach a device that includes a flask having a capacity that is not greater than 10 ml. Moreover, there is no suggestion within these references to make the flask of a device as small. Buckley is directed to containers with a closure that includes an extendible dispensing member that is enclosed within the container when the closure is secured in a closed position on the container. The extendible dispensing member is able to reach substantially all portions of the interior of the container when the closure is

removed. Buckley teaches very little about the container except to identify possible materials and a cylindrical shape (*see* Buckley, column 1, lines 48-55). Buckley's primary teachings are directed to the extendible (also referred to as telescoping) dispensing member that could include a variety of forms on its end, ranging from a spoon for use with granular or powdered material to a brush for use with a finger nail polish (*see* column 1, line 66 - column 2, line 7). Because Buckley is directed to a diverse range of containers, there is no suggestion within Buckley to include a container where the capacity is no greater than 10 ml.

Because Drozd is directed to the tamper-proof closures used on any variety of containers, there are no teachings with respect to the capacity of the container. The only disclosure directed to the container pertains to the structure of the container neck that operates with the tamper-proof closure (*see* Drozd, column 5, line 24 - column 6, line 16.)

In addition, the combination of Buckley and Drozd also would not result in the claimed combination because each reference teaches away from at least one feature of the claimed device. Buckley teaches a different solution for providing a dispensing member 12 that is longer than the container into which the dispensing member is disposed. Buckley teaches the use of the extendible or telescoping two part dispensing member (21 and 22) to provide the dispensing member with a length that allows it to reach the bottom of the container (*see* Buckley, column 2, line 44 - column 3, line 16). In the claimed device, the applicator stem is not extended, but the length that can be seen by the user is increased due to the detachment of the releasable ring from the cap. Thus, Buckley teaches a different solution to providing a longer length applicator stem.

Drozd is directed to tamper-proof closures. As such, Drozd implicitly teaches away from a flask containing a substance for application to nails since there is no need or motivation to include a tamper-proof closure on a nail varnish substance that is not a medicine or does not require sterile conditions.

For at least the reasons listed above, the combination of Buckley and Drozd fails to teach or suggest the device of claim 1. Accordingly, withdrawal of the 35 U.S.C. §103(a) rejection of claims 1, 4-7, 10-16, 18-28 and 31-36 is respectfully requested.

Claims 1, 4-7, 10-16, 18-28 and 31-38 stand rejected under 35 U.S.C. §103(a) over Buckley in view of Yasada, U.S. Patent No. 4,592,476. This rejection is respectfully traversed.

Claim 37 recites, in pertinent part, a device comprising a flask having a flask body having height ... the flask containing a substance for application to nails ... an applicator element having a length ... wherein the length of the applicator element is equal to the height of the flask body to within about 30 %.

Claim 38 recites, in pertinent part, a device comprising a flask comprising a threaded neck having a length, the flask containing a substance for application to nails ... an applicator comprising a stem having a length ... wherein the length of the stem is equal to the length of the neck to within about 30 %.

Buckley and Yasada each fail to teach or suggest an applicator element having a length equal to the height of the flask body to within about 30%, as recited in claim 37. Moreover, these references fail to teach or suggest an applicator stem having a length equal to the length of the neck to within about 30%, as recited in claim 38.

The combination of Buckley and Yasada similarly fails to teach or suggest a flask having a capacity not greater than 10 ml and containing a substance for application to nails, as recited in claim 1 for the same reasons as noted above with respect to the Buckley/Drozd rejection. Like Drozd, Yasada is directed to a tamper evidence ring. Yasada contains no suggestion or motivation to provide a flask containing a substance for application to nails with a tamper evidence ring.

For at least the reasons, noted above, the combination of Buckley and Yasada fails to teach or suggest the all features of independent claims 1, 37 and 38. Accordingly, withdrawal of the 35 U.S.C. §103(a) rejection of claims 1, 4-7, 10-16, 18-28 and 31-38 is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-19, 21-25, 27-31 and 34-37 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:  
Petition for Extension of Time

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